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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,972	10/28/2003	John J. McCook		4424

7590 03/01/2006
THEODORE JAY
APT 600
16 N. CHATSWORTH AVE.
LARCHMONT, NY 10538

EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,972

Applicant(s)

MCCOOK ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1.

Claims 1-9 are pending in this application filed 10/28/2003.

Applicant's claims are directed toward sunless tanning products and processes.

Claim Rejections - 35 USC § 112

3.

Claims 1-3 and 5-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Serial No. 10/694,972
Art Unit 1616

-3-

The above stated claims are viewed as indefinite because they do not end with any punctuation. Claims must end in a period or some form of acceptable punctuation. Clarification is necessary in the above stated matter.

Claim Rejections - 35 USC § 102

4.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipate by both Castro et als. USP 6,113,888 and USP 6,214,322
B1.

Both Castro references disclose self-tanning formulations or compositions comprising dihydroxyacetone as the self-tanning agent. Note column 2 for both references. In column 5, both references disclose that 1,2-pentanediol is present as a humectant. Note Table 1 for the amounts in proportions which are 4:1 which falls within the range claimed by applicant. In claim 20 of the '888 patent the 1,2-pentanediol is present from 0.001% to about 20% by weight. Both references disclose that other cosmetically acceptable carriers may also be present such as propellants, humectants, fragrances, sunscreen agents, sugars, preservatives, etc. Note claims 16 and 20 respectively. In both references in column, Castro discloses that the pH is between 4 and 4.8 which falls in the range claimed by the applicant in the instant case. Both Castro references disclose each and every aspect of the invention as claimed by the applicant in the instant case.

Telephone Inquiries

6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (571) 272-0612 and fax number

Serial No. 10/694,972
Art Unit 1616

-5-

(571) 273-0612. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached at (571) 272-0629.

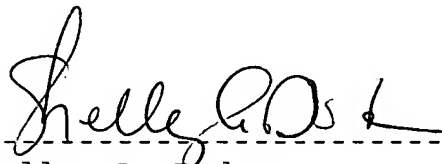
7.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more

Serial No. 10/694,972
Art Unit 1616

-6-

information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

February 21, 2006